

RIEMER & ASSOCIATES LLC
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KAREN NOVICK,

09 CV 6865 (RKE)

Plaintiff,

AFFIRMATION OF
SCOTT M. RIEMER

-against-

METROPOLITAN LIFE INSURANCE COMPANY
AND METLIFE OPTIONS AND CHOICES PLAN
NO. 512,

Defendants.

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SCOTT M. RIEMER, an attorney admitted to practice before this Court declares
pursuant to 28 U.S.C. §1746, under penalties of perjury that the following is true and correct:

1. I make this affirmation in support of plaintiff's application for attorneys'
fees, costs, and prejudgment interest.

Work History and Experience of Scott M. Riemer

2. I am a 1983 graduate of the University of Michigan Law School. I am an
attorney in good standing admitted to practice in the State of New York, the Southern District of
New York, the Eastern District of New York, the District of Connecticut, the Court of Appeals for
the Second Circuit, the Court of Appeals for the Third Circuit, and the Supreme Court of the
United States of America.

3. In 1994, I started my own practice, concentrating almost exclusively in the area of ERISA litigation, particularly claims for long term disability benefits. In 2005, I founded the law firm of Riemer & Associates LLC (the "Firm"). The Firm generally employs one associate and three paralegals. The Firm is located at 60 East 42nd Street, Suite 1750, New York 10165.

4. From the Spring of 1989 through the Fall of 1993, I was an associate in the litigation department of Schoeman, Marsh & Updike. At SM&U, I litigated cases in both New York State and the federal courts. My litigation experience included tort, products liability, ERISA, and admiralty cases.

5. From Spring of 1985 through Spring of 1989, I was an associate in the employee benefits department of Patterson, Belknap, Webb & Tyler. At PBW&T, I advised corporate clients in all aspects of employee benefit plan design, structuring, administration, and compliance with ERISA and the Internal Revenue Code. In total, I drafted more than 50 pension, profit-sharing and 401(k) plans.

6. From Spring of 1984 through Spring of 1985, I was an associate with Gould & Wilkie, a small general practice firm.

7. I have represented well over 350 claimants in complex claims under ERISA. I have appealed several cutting-edge ERISA cases to the Second Circuit:

Levitian v. Sun Life and Health Ins. Co., 2012 U.S. App. LEXIS 12340 (2d Cir. 2012);

Epstein v. Hartford Life and Acc. Ins. Co., 2011 U.S. App. LEXIS 23162 (2d. Cir. 2011);

Bendik v. Hartford Life Ins. Co., 351 Fed. Appx. 519 (Nov. 3, 2009);

Winkler v. MetLife, 2006 U.S. App. LEXIS 5447 (2d Cir. 2006)

Langman v. Laub, 328 F.3d 68 (2d Cir. 2003);

Dunnigan v. MetLife, 277 F.3d 223 (2d Cir. 2002); and

Juliano v. The Health Maintenance Organization of New Jersey, 221 F.3d 279 (2d Cir. 2000).

8. I have served as lead counsel in a 968-member ERISA class action in the Southern District of New York (*Wright, et. al. v. United States Trust Company of New York, et. al.*, 95 Civ. 6035 (SHS) (settled in 1998 for \$2.4 million)).

9. On March 27, 2008, I co-authored an *amicus curiae* brief to the Supreme Court in the case of *MetLife v. Glenn* on behalf of the NYC Chapter of the National Multiple Sclerosis Society.

10. I have written the following articles concerning various aspects of ERISA:

“Top Ten Things That Employment Lawyers Should Know About Long Term Disability Insurance Claims,” *The New York Employee Advocate*, Vol. 13, No. 5, July 2006.

“What to Do If Your Disability Benefits Are Denied,” *CFIDS Chronicle* (Spring 2001);

“What to Do If You Become Disabled,” *CFIDS Chronicle* (Winter 2001);

“HMO’s Face a Post-Pegram World,” *New York Law Journal* (July 13, 2000);

“Corporate Outsourcing and ERISA §510,” *New York Law Journal* (June 27, 1997);

“What to Do When Denied Health or Disability Benefits,” *CFIDS Chronicle* (Spring 1995);

“Jury Trials under ERISA,” *New York Law Journal* (August 10, 1994); and

“Discretionary or Conditional Forms of Benefit,” *Journal of Pension Planning & Compliance* (Fall 1986).

11. I have lectured on the following topics relating to the litigation of long term disability claims under ERISA:

“Disability Claims and Lyme Disease,” 2012 Annual Meeting of the International Lyme and Associated Diseases Society, Inc., Boston, Massachusetts, on November 2, 2012;

“The Restrictions and Limitations Between the Own Occupation and the Any Occupation Standard,” American Conference Institute, New York, New York, on January 26, 2012;

"Practical Tips to Make Conflict of Interest Discovery Work for You and Tips to Defend Against its Impact; A View from Both Sides of the Bench," American Bar Association, Tort Trial & Insurance Practice Section, Miami, Florida, on January 15, 2011;

"ERISA Basics" conference held by the Pension Rights Center, on June 10, 2010;

“The Impact of *MetLife v. Glenn* on the Standard of Review and Discovery,” American Conference Institute, Boston, Massachusetts, on June 15, 2009;

“ERISA Benefit Litigation: From Pilot Life and Firestone to *Glenn*—Where are We Now,” ALI-ABA, Live Video Webcast, December 2, 2008;

“*MetLife v. Glenn*,” Panelist at the New York, New Jersey and Connecticut Regional Conference of the College of Labor & Employment Lawyers, November 3, 2008;

“A New Firestone Drill under ERISA: *MetLife v. Glenn*,” Practicing Law Institute, Live Audio Webcast, July 17, 2008;

“Standard of Review in ERISA Litigation in Light of *MetLife v. Glenn*,” at the 11th National Advanced Forum on Litigation Disability Insurance Claims, American Conference Institute, Boston, Massachusetts, on June 12, 2008;

“Long-Term Disability Benefits in Danger: Disturbing Trends and Dirty Tricks” at Special Workshop on Long Term Disability Benefits, Friends in Deed, New York, New York, on October 24, 2007;

“Developments in ERISA Claims Handling and Litigation” at the 10th National Advanced Forum on Litigation Disability Insurance Claims, American Conference Institute, Boston, Massachusetts, on June 7, 2007;

“Litigating ERISA Disability Claims: Applicability, Discovery and Other Critical Issues” at the 9th National Advance Forum on Litigating Disability Insurance Claims, American Conference Institute, Miami, Florida, on February 23, 2006;

“Short Term and Long Term Disability Benefits” Lorman Education Services, April 19, 2001;

“Fiduciary Issues For Welfare Plans” NYSBA Labor and Employment Section, March 16, 2001; and

“Procedural Aspects of Litigating Benefit Claims” at the National Employment Lawyers Association/New York Spring Conference (April 1996).

12. In the past, I served as a member of the ERISA and Insurance Law panels of the Legal Referral Service of the Association of the Bar of the City of New York.

13. I have been selected as a SuperLawyer in the area of employee benefits law since 2006. I am often quoted as an ERISA litigation expert in numerous publications including, but not limited to, BNA Pension Reporter, Newsday, Consumers Digest, and Lawyers Weekly USA.

14. I author and maintain a widely viewed website named www.disabilityclaims.com, which provides readers with practical information on disability insurance claims under ERISA. I also maintain a blog on long term disability insurance issues named www.longtermdisabilitylawblog.com. The blog discusses practice tips for long term disability attorneys and claimants.

15. At the January 12, 2009 annual meeting of the NYC Chapter of the National Multiple Sclerosis Society, I was awarded with the Chapter’s Public Education Award. The award honored my volunteer services for Chapter members and my *pro bono* efforts to make the procedures used for long-term disability insurance more equitable for those disabled with multiple sclerosis. I also have been awarded a Certificate of Recognition for *pro bono* services on behalf of cancer patients from the Robert B. McKay Community Outreach Law Program of the Association of the Bar of the City of New York.

16. In October 2000, my client and I were the recipients of the Courageous Plaintiff Award presented by the National Employment Lawyers Association of New York. The award was for *Juliano v. The Health Maintenance Organization of New Jersey*, 221 F.3d 279 (2d Cir. 2000),

which is an important legal precedent in the area ERISA litigation, cited as authority in 260 federal court decisions. The case also resulted in the award of attorney fees totaling \$745,857.00.

Work History and Experience of Joseph Anci

17. Mr. Anci was an associate with the firm from February 2009 to December 2009. He is a 2004 graduate of Brooklyn Law School.

18. He is an attorney in good standing admitted to practice in the State of New York, the Southern District of New York, and the Eastern District of New York.

19. At the Firm, he exclusively represented claimants in their claims for long term disability benefits under ERISA.

20. From May 2008 to February 2009, he was Principal Law clerk to a Supreme Court judge in Brooklyn.

21. From September 2004 to May 2008, he was Deputy County Attorney in Nassau County. At Nassau County, he handled all phases of cases involving civil rights, constitutional law, election law, and employment discrimination.

Work and Experience of Sharon H. Lee

22. Ms. Lee has been an associate at the Firm since November 2010. She is a 2009 graduate of Syracuse University College of Law, where she was on the executive board of the Syracuse Journal of International Law and Commerce.

23. She is an attorney in good standing admitted to practice in the State of New York, the Southern District of New York, and the Eastern District of New York.

24. Prior to working at the Firm, she was an attorney advocate at Binder & Binder, where she managed a caseload of Social Security disability insurance claims.

Work and Experience of Ellen R. Mayer

25. Ms. Mayer was a paralegal with the Firm from August 2003 through February 2012. She had over 14 years experience working as a paralegal in a law firm, and over 26 years of experience working in the employee benefits field.

Work and Experience of Audrey Shore Beerman

26. Ms. Beerman (f/k/a Audrey Shore) was a paralegal with the Firm from February 2008 through August 2012. She held a BA degree from Columbia University and the Jewish Theological Seminary. She also holds a MA degree from Brandeis University.

Work and Experience of Kasandra A. Raux

27. Ms. Raux (f/k/a Kasandra Gonzalez) has been a paralegal with the Firm since September 2009. Ms. Raux holds a BA from College of the Holy Cross.

28. From Winter 2007 through September 2009, she was a paralegal at Binder & Binder, LLC. At Binder, she was a Senior Legal Writer preparing pre-hearing and appellate briefs to the Social Security Administration on behalf of individuals seeking Social Security Disability Income benefits.

Hourly Rates

29. The Firm represents clients in varying ways. Prior to litigation (*i.e.*, assisting claimants with their disability applications or in exhausting ERISA claims procedures), claimants may retain the Firm only on an hourly, a flat fee basis or on a contingency basis. Approximately 50% of the Firm's time is spent representing clients on a straight hourly basis. In litigation, clients may only retain the firm on a contingency basis. The vast majority of the Firm's litigation clients were hourly rate clients of the Firm prior to litigation.

30. The hourly rates charged to all of our current hourly clients (over 170) are: \$600 for Scott M. Riemer; \$340 for senior associate time; \$300 for junior associate time; \$200 for

senior paralegal time; and \$180 for paralegal time. These rates are never subject to negotiation. The Firm started charging these rates effective July 1, 2010.¹ These rates are commensurate with the rates charged by other attorneys in the New York area (and in other similar metropolitan areas) who concentrate in ERISA litigation with commensurate reputation and experience. For comparison, I annex hereto the affirmations of Herbert Eisenberg, Daniel Feinberg, Edgar Pauk and Robert Bach as **Exhibit A**. These affirmations were originally submitted in support of the Firm's fee petition in *Zoller v. INA Life Ins. Co. of New York*, 06 CV 0112 (RJS).

31. Attached hereto as **Exhibit B** are the orders of Judge Sullivan awarding this Firm the full amount of fees requested. In that fee petition, the Firm requested a total of \$170,841.60 in fees based on the following hourly rates: \$560 for Scott M. Riemer; \$340 for associates; and \$180 for paralegals. The Firm also requested an additional \$9,625 for preparation of the reply brief, based on those same rates.

32. Attached hereto as **Exhibit C** is the order of Judge Hellerstein awarding this Firm attorneys' fees at the rates requested. In that fee petition, the Firm requested the following hourly rates, which are identical to the hourly rates sought in this case: \$600 for Scott M. Riemer; \$275 for associate; and \$200 for paralegals.

33. Judge Hellerstein, however, awarded 40% of the requested attorneys' fees because plaintiff achieved a remand. Plaintiff subsequently submitted an application for the remainder of attorneys' fees (60%) on September 14, 2012 after achieving full success on remand.

Record Keeping

¹ The \$300 rate for junior associates was instituted on January 1, 2013. Prior to that date, the rate for junior associates was \$275 per hour.

34. All of the attorneys and paralegals at the Firm maintain their time contemporaneously, which is entered directly onto our computers as tasks are accomplished throughout the day. We use Time Matters 12 software published by Lexis Nexis, which provides an easy to use interface to record time and a description of tasks performed. Time is recorded to the twentieth of an hour. At the end of the day, I check the time recorded by all employees of the Firm.

35. In an identical fashion to the entry of time, out-of-pocket expenses are entered into Billing Matters and charged to the case.

Hours Billed

36. For purposes of this fee application, the data from Time Matters was transferred to an Excel Spreadsheet. The Spreadsheet specifies the date a service was furnished, the initials of the provider — either Scott M. Riemer (SMR); associates Joseph Anci (JA) and Sharon H. Lee (SHL); and paralegals Ellen R. Mayer (ERM), Audrey Shore Beerman (AS or AB), and Kasandra A. Raux (KAG or KAR), the amount of time spent on the service, and a description of the service. A copy of the report is annexed hereto as **Exhibit D**.

37. The following table has been compiled to assist the Court in analyzing the time expended by the Firm. The time was divided into tasks performed. The table shows the amount of time each the category of employees spent on each specific task.

| | <u>Scott M. Riemer</u> @ \$600 | Associate <u>Anci</u> @ \$340 | Associate <u>Lee</u> @ \$300 | Paralegal <u>Raux</u> @ \$200 | Paralegal <u>Mayer</u> @ \$200 | Paralegal <u>Beerman</u> @ \$200 |
|---|---------------------------------------|-------------------------------------|------------------------------------|-------------------------------------|--------------------------------------|--|
| Client Communications | --- | --- | --- | --- | --- | --- |
| Complaint/ Answer | 3.5 | 0.2 | --- | --- | 1.1 | 1.7 |
| Opposition to MetLife's Motion to Dismiss | 11.25 | --- | --- | --- | --- | --- |
| Opposition to MetLife's Motion to Certify Question for Appeal | 1.55 | --- | --- | --- | --- | --- |
| Rule 16/Discovery/ Discovery Motion | 4.05 | 5.6 | --- | --- | --- | --- |
| Mediation/ Mediation Brief | 0.75 | --- | --- | --- | --- | --- |
| Cross Motions for SJ & Oral Argument | 1.3 | --- | --- | --- | --- | --- |
| Reply Brief | 0.25 | --- | --- | --- | --- | --- |
| Opposition to MetLife's Motion to Strike A Portion of Plaintiff's Cross Motion for SJ | --- | --- | --- | --- | --- | --- |
| Re: Court Opinion and Order on SJ | 1.5 | --- | --- | --- | --- | --- |
| 59(e) Motion for Fees/Interest | 2.55 | --- | 5.5 | --- | --- | --- |
| Miscellaneous Communications with Court and Counsel | 3.2 | --- | --- | 2.12 | 2.2 | 4.7 |
| TOTAL HOURS | 29.90 | 5.8 | 5.5 | 2.12 | 3.3 | 6.4 |
| TOTAL VALUE | \$17,940.00 | \$1,972.00 | \$1,650.00 | \$424.00 | \$660.00 | \$1,280.00 |
| TOTAL VALUE -10% REDUCTION | \$16,146.00 | \$1,775.00 | \$1,485.00 | \$382.00 | \$594.00 | \$1,152.00 |

Total value without Reduction: \$23,926.00

Total value with 10% Reduction: \$21,534.00

38. The Firm proposes a 10% across-the-board reduction, not because it believed that it operated inefficiently, but in order to assist the Court in making its determination of the amount of reasonable hours expended. If the Court believes that the full amount of hours expended were reasonable, plaintiff requests that the Court award all such time.

Out-of-Pocket Expenses

39. Plaintiff seeks \$474.00 in costs, which represents some but not all of the out-of-pocket expenses expended on the case. (See **Exhibit E**). Frequent out-of-pocket expenses for postage and miscellaneous copying were not charged to the case. The case was also not charged for the vast amount of LEXIS research conducted. The Firm pays a flat monthly rate to LEXIS for much of the research conducted at the Firm. No attempt was made to prorate these monthly charges to the case.

Dated: New York, New York
January 23, 2013

/s/Scott M. Riemer
SCOTT M. RIEMER (SR5005)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 23, 2013, I served a true and complete copy of the foregoing Affirmation of Scott M. Riemer by transmitting the same by electronic mail and ECF to the following individuals:

Michael H. Bernstein, Esq.
Sedgwick LLP
225 Liberty Street, 28th Floor
New York, NY 10281-1008
Michael.Bernstein@sedgwicklaw.com

Dated: January 23, 2013
New York, New York

/s/ Scott M. Riemer
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